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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,990	07/09/2003	Henrik S. Olsen	PF108P2D1	8196

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HUMAN GENOME SCIENCES INC  
INTELLECTUAL PROPERTY DEPT.  
14200 SHADY GROVE ROAD  
ROCKVILLE, MD 20850

EXAMINER

NICHOLS, CHRISTOPHER J

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/614,990

Applicant(s)

OLSEN ET AL.

Examiner

Christopher J Nichols, Ph.D.

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-138 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-138 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15, drawn to a method of *stimulating phosphate absorption* by a cell, classified in class 514, subclass 2, for example.
  - II. Claims 16-31, drawn to a method of *increasing resistance of a cell to hypoxic stress*, classified in class 514, subclass 2, for example.
  - III. Claims 32-47, drawn to a method of *protecting a cell by hypoxic stress*, classified in class 514, subclass 2, for example.
  - IV. Claims 48-62, drawn to a method of *protecting a cell against harmful calcium levels*, classified in class 514, subclass 2, for example.
  - V. Claims 63-77, drawn to a method of *protecting a cell against calcium-mediated cell death*, classified in class 514, subclass 2, for example.
  - VI. Claims 78-102, drawn to a method of *diagnosing neural injury*, classified in class 435, subclass 7.1, for example.
  - VII. Claims 103-120, drawn to a method of *protecting a patient against neural injury*, classified in class 514, subclass 2, for example.
  - VIII. Claims 121-138, drawn to a method of *treating a patient having neural injury*, classified in class 514, subclass 2, for example.
2. The inventions are distinct, each from the other because of the following reasons:

Art Unit: 1647

3. Although there are no provisions under the section for "Relationship of Inventions" in M.P.E.P. § 806.05 for inventive Inventions that are directed to different methods, restriction is deemed to be proper because these methods appear to constitute patentably distinct inventions for the following reasons: Inventions I, II, III, IV, V, VI, VII, and VIII are directed to methods that are distinct both physically and functionally, and are not required one for the other.

Invention I requires search and consideration of *stimulating phosphate absorption*, which is not required by any of the other Inventions. Invention II requires search and consideration of *increasing resistance to hypoxic stress*, which is not required by any of the other Inventions.

Invention III requires search and consideration of *protecting against hypoxic stress*, which is not required by any of the other Inventions. Invention IV requires search and consideration of *protecting against harmful calcium levels*, which is not required by any of the other Inventions.

Invention V requires search and consideration of *calcium-mediated cell death*, which is not required by any of the other Inventions. Invention VI requires search and consideration of *diagnosing neural injury*, which is not required by any of the other Inventions. Invention VII requires search and consideration of *protecting against neural injury*, which is not required by any of the other Inventions. Invention VIII requires search and consideration of *treating neural injury*, which is not required by any of the other Inventions.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, separate search

Art Unit: 1647

requirements, and/or different classification, restriction for examination purposes as indicated is proper.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Art Unit: 1647

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Christopher James Nichols, Ph.D.** whose telephone number is **(571) 272-0889**. The examiner can normally be reached on Monday through Friday, 8:00 AM to 6:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gary Kunz, Ph.D.** can be reached on **(571) 272-0887**.

The fax number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

*Elizabeth C. Kemmerer*

CJN  
April 12, 2004

ELIZABETH KEMMERER  
PRIMARY EXAMINER